No. 10077

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

OMAHA WOODMEN LIFE INSURANCE SOCIETY,
a corporation,

Appellant,

vs.

HARRY E. KRUSSMAN, as Trustee of an Express Trust,
Appellee.

APPELLANT'S PETITION FOR RE-HEARING

and

BRIEF IN SUPPORT OF PETITION FOR RE-HEARING

Upon appeal from the District Court of the United States for the District of Idaho, Eastern Division.

A. L. MERRILL
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PETITION FOR RE-HEARING

To the United States Circuit Court of Appeals for the Ninth Circuit, and the Judges thereof:

Comes now Omaha Woodmen Life Insurance Society, the appellant in the above entitled cause, and presents this its petition for a re-hearing of the above entitled cause, and in support thereof respectfully represents:

I.

That the Court erred in assuming as a basis for its decision that appellant had a duty to take some action which would disclose to the deceased Eric A. Krussman that his contract or certificate became suspended each time he failed to pay an installment of assessment on or before the last day of the month in which it became due.

II.

That the Court erred in sustaining the judgment of the District Court to the effect that appellant at all times treated the contract as continuing in force and by its conduct waived he right to forfeit the contract.

III.

That the Court erred in holding that the appellant waived the suspension or forfeiture in that it failed to take cognizance of the whole contract but only took cognizance of the provision providing for suspension, and particularly failed to consider Section 65 of the Constitution, Laws and By-laws, which provided that a member might become reinstated within three months from suspension by paying the delinquent installments, upon condition that the person be in good health at the time of payment and remain in good health for thirty days thereafter.

IV.

That the Court erred in holding that for nearly five years the deceased was led to believe that the delay in his payments was not fatal to his purpose in that by so doing the Court overlooked Section 65 of the Constitution, Laws and By-laws, which gave the deceased the legal right to pay his installments after the last day of the month but upon the condition that he be in good health at the time of payment and remain in good health for thirty days thereafter; and further overlooked an Idaho statute designated Section 40-2309 I. C. A. 1932 which provides that the Constitution, Laws and By-laws and

all amendments thereto shall constitute a part of the agreement between the Society and a member; and further overlooked the fact that members of a fraternal benefit society are conclusively presumed to know the terms of the Constitution, Laws and By-laws of the Society of which they are a member.

V.

That the Court erred in holding that the appellant waived the suspension by reason of having accepted payment made by check payable to appellant.

VI.

That the Court erred in that it failed to follow the law of Idaho governing fraternal benefit societies, (Chap. 23, Title 40, I. C. A. 1932, particularly Section 4-2309 and Section 40-2331) and in holding that the case was governed by Rasicott vs. Royal Neighbors of America, 18 Ida. 85, 108 Pac. 1048, and in holding that the courts of Idaho would adopt the rule announced in the case of Order of United Commercial Travelers vs. Campbell, 115 Fed. (2) 733.

VII.

That the Court erred in that it failed to decide the case in accordance with the law of Idaho with regard to waiver.

VIII.

That the Court erred in that it failed to consider the complete contract between the parties and to enforce the provi-

sions thereof which necessarily would require a reversal of the judgment of the District Court.

WHEREFORE, upon the foregoing grounds it is respectfully urged that this petition for a re-hearing be granted and that judgment of the District Court of the United States for the District of Idaho, Eastern Division, be upon further consideration reversed.

Respectfully submitted,

A. L. MERRILL

R. D. MERRILL

Residing at Pocatello, Idaho

RAINEY T. WELLS

Residing at Amaha, Nebraska

Attorneys for Appellant

CERTIFICATE OF COUNSEL

I, counsel for the above named appellant, do hereby certify that the foregoing petition for re-hearing of this cause is well founded and presented in good faith and not for delay.

Attorneys for Appellant

A. L. MERRILL

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

OMAHA WOODMEN LIFE INSURANCE SOCIETY,
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Appellant,

vs.

HARRY E. KRUSSMAN,
as Trustee of an Express Trust,

Appellee.

BRIEF IN SUPPORT OF PETITION FOR RE-HEARING

This brief will be confined to a discussion of the appellant's grounds for re-hearing, without further formal statement of points and authorities except those presented in connection with the discussion.

In order to properly present appellant's petition it is necessary to call attention to the fact that the appellant is a fraternal benefit society, and that the legislature of the State of Idaho in whcih the certificate involved was issued adopted a Code of Laws specifically governing such societies and exempting them from all other insurance laws. Under the terms of this Code of Laws, Section 40-2309 I. C. A. 1932,* the con-

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*See Appendix

stitution, laws and by-laws of a fraternal benefit society constitutes a part of the agreement between the society and the member.

Section 63 of the Constitution, Laws and By-laws of the appellant at the time the member became suspended and thereafter, required every member of the Society to pay to the Financial Secretary of his local camp one installment of assessment and that if he did not pay such installment on or before the last day of the month in which it became due he thereby became suspended. Section 65 provided that a suspended member might again become a member or reinstate his membership by payment of his delinquent installments, if such payment be made within three months from the date of his suspension, but that by so doing he warranted that he was in good health at the time of such payment and would remain in good health for thirty days thereafter. Suspension upon failure to pay was automatic by Section 63, and reinstatement was automatic, subject to the condition of good health upon payment. It was further provided in Section 65 that all such payments made after the last day of the month should be received and retained by the Society without waiving any of the provisions of this section until such time as the Secretary of the Society should have received actual, not constructive or imputed, knowledge that the suspended person was not in fact in good health when he attempted to again become a member, or did not remain in good health for thirty days thereafter. By Section 66 (b) as well as Section 65 good health at the time of payment and for thirty days thereafter was a condition precedent to reinstatement. This section was unchanged thereafter except that in 1939 it was amended to provide that a person

might become reinstated within fifteen days from suspension simply by payment without regard to the condition of his health. Reference is here made to appellant's original brief and authorities therein referred to. All of said sections are quoted in said brief and are parts of Plaintiff's Exhibits 3, 4 and 5.

Under the terms of the certificate and the Constitution, Laws and By-laws of the Society suspension was automatic and self-executing upon failure to pay on or before the last day of the month. We particularly here refer to Point III of appellant's original brief and authorities thereunder and to the argument on pages 29 to 46 inclusive of said brief.

Where a suspension or forfeiture is self-executing, notice of such forfeiture or suspension is not required. In this connection it is stated under the subject of Mutual Benefit Insurance, 45 C. J. 102, Sec. 89, as follows:

> "Payments due at stated times. If, by the laws of the society, dues and assessments accrue at stated intervals or fixed dates, the members are bound to take notice of that fact, and other notice is not necessary in the absence of a statute or law of the society requiring it."

It is further stated in 45 C. J. 120, Sec. 119 as follows:

> "But where the laws of the society expressly dispense with notice, or provide that a member shall ipso facto stand suspended for failure to pay dues and assessments a defaulting member is not entitled to notice in order to work a forfeiture."

Certainly under Section 65 of the Constitution, Laws and By-laws, which was a part of the contract, the member had

the right to pay his installments after the last day of the month and become reinstated, subject only to the condition that he be in good health at the time of payment and remain in good health for thirty days thereafter; but his payment was a warranty that he was in good health just as effectively as if he had signed a written certificate to that effect. When the member pays his delinquent installments under Section 65 of the Constitution, Laws and By-laws the Society is legally obligated to accept such payments in accordance with Section 65 and the Society has the legal right to retain those installments until such time as knowledge is obtained that he was not in good health at the time of payment or did not remain in good health for thirty days thereafter. To hold that the Society by accepting payments after the last day of the month waives the forfeiture or creates a new contract with the member is to disregard the plain provisions of the contract itself. Sov. Camp W. O. W. vs. Moraida (Tex.) 113 SW(2) 177. Van Dahl vs. Sovereign Camp (Neb.) 264 N. W. 454.

We submit the holding of the Court that the Society at all times treated the contract as continuing in force and by its conduct waived the right to forfeit the contract is due to a misapprehension of the terms of the contract itself. The facts as shown by the record are that the Society only conformed to the provisions of the contract itself. It accepted payments made after the last day of the month exactly as required by Section 65. The record positively shows that the Society had no knowledge whatever that Eric A. Krussman was in ill health when any of the payments were made until that information was given to it after his death. It was therefore obliged to accept the payments. See: White vs. Sovereign Camp

W. O. W. (SC) 192 S. E. 161. It had no right to presume that he was in ill health, the presumption being that a person is in normal health.

Board of Health of Lyndhurst Tp. vs. United Cork Co. (N. J.) 172 Atl. 347;

Dallas et al vs. De Yoe (Cal.) 200 Pac. 361;

Murphy et al vs. Natl. Ice Cream Co. et al (Cal.) 300 Pac. 91.

It therefore follows that sending to Eric A. Krussman refunds on February 25, 1939, and February 1, 1940, was not a waiver of suspension or a course and custom which would lead him to believe that the suspension had been waived. On the other hand the Society did exactly what it had a right to do; it presumed Eric A. Krussman to be in good health when he paid the delinquent payments and accordingly made the same distribution to him as that to which he would have been entitled had he been in good health. It is sigificant to note from the record that when knowledge of ill health was obtained and a refund of assessments made, the amounts paid on these dates as refunds were deducted from the refund of assessments. Undoubtedly the Society had a right to presume that Eric A. Krussman was in good standing so long as he failed to notify the Society that he was not in good health at the time of such payments. He was a member of the Society and as such was both insured and insurer. He was presumed to know the by-laws and was required to suffer the consequences if he failed to abide by them. Again we refer the Court

to the points and authorities thereunder in appellant's original brief.

Apparently the Court decided this case on the theory that a provision was made for suspension but that the member was not given the specific right to pay his installments within three months from the date of suspension as provided in Section 65. It undoubtedly is true that if provision is made for a forfeiture and for reinstatement, and the member attempts to reinstate and is permitted to reinstate many times without complying with the provision for reinstatement, a waiver is indicated. That is not the case here. The member has done exactly what he had a right to do, and the Society has done exactly what it was compelled to do under the contract. We know of no statement which explains the situation better than the language of the Supreme Court of Tennessee in the case of Lester vs. Sovereign Camp W. O. W., (Tenn.) 110 SW(2) 471, wherein the Court was considering a case under exactly the same circumstances, involving the same by-laws. The Court said:

> "Under the foregoing provisions a suspended member, by paying the current and all past due installments within three months from the date of his suspension, is ipso facto reinstated, provided he is in good health and continues for thirty days. If he is not in good health, he is not reinstated by paying the current and past due installments."

> "Insured, in paying his installments on an average of twelve days after they became due, and at a time when, so far as the record shows, he was in good health, was strictly complying with the terms of his contract, and was not establishing a new agreement

by custom or course of dealing between the parties."

> "For the reasons set forth above we are of the opinion that the question of waiver and estoppel is not involved in this case. If, by its course of dealing, defendant had accepted from time to time such delinquent installments with knowledge that the insured was not in good health when they were paid, it could be plausibly argued that it had waived the forfeiture provision relating thereto. But it is not shown that the defendant ever accepted a delinquent installment with knowledge that the insured was in bad health at the time."

To the same effect is Pickens vs. Security Benefit Association (Kans.) 231 Pac. 1016.

We are convinced that the Court's holding that for nearly five years the deceased was led to believe that the delay in his payments was not fatal to his purpose was erroneous. We do not know how better to explain the appellant's position on this proposition than by citing the opinion of the Court in the case of Lester vs. Sovereign Camp and in Pickens vs. Security Benefit just referred to. As explained in those opinions the deceased had the right to pay these installments after the last day of the month, and absent knowledge on the part of the Society that he was not in good health the Society was obligated to accept the payments. According to the record the Society refunded every installment paid after the last day of the month which was paid while the member was in ill health. This refund was made as soon as the Society obtained knowledge of the ill health.

Certainly, as stated in the Pickens case, a custom of paying after the last day of the month while a person is in good health

is not a custom which will compel a society to accept payments after the last day of the month while a person is in ill health. While it is true most of the payments were made by check payable to the Society itself, and the Society had knowledge of the dates of these payments, it was still necessary in order to create a waiver that the Society have knowledge of the ill health. Knowledge is an indispensable constituent of waiver. Without knowledge of ill health there could have been no waiver, and while it was held by the District Court that the Financial Secretary had knowledge of ill health and that it was imputed to the Society, there was no testimony in the record to justify such a holding. The Financial Secretary was not a witness; he was deceased before this case was tried. Furthermore, it was provided in Section 40-2331 I. C. A. 1932:

> "Constitution, Laws and By-laws may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and all beneficiaries of members,"

and pursuant to such section the Society adopted Section 109 (g) of the 1937 Constitution, Laws and By-laws, which became 107 (g) of the 1939 Constitution, Laws and By-laws, whereby it was provided that:

> "The Financial Secretary shall not by acts, representations or waivers, nor shall the camp by vote or otherwise, or any of its officers, have any power or authority to waive any of the provisions of the constitution, laws and by-laws of the Society, nor to bind the Society by any such acts."

It is therefore apparent that under this statute the knowledge of the Financial Secretary, if any, was not imputed to the Society. In this connection see Sov. Camp W. O. W. vs. Moraida (Tex.) 113 SW (2) 177, and other cases cited under Point II of appellant's original brief and the argument on pages 46 to 57 inclusive of said brief.

In the Court's opinion it is stated that it is apparent that if the provisions of the contract are strictly applied recovery is prohibited. The case of Rasicott vs. Royal Neighbors is then considered. Although the facts in this case are admittedly not in point, the Court adopts the view that the opinion points the path which it should follow in deciding this case. It is contended by the appellant that the Court was mistaken in this conclusion. Upon a reading of the opinion in this case it appears that the subject of the decision and the law under which it was decided are so different that it should not be held to establish the rule to be followed here. The Court in the Rasicott case had under consideration a contract where, under the facts as stated by the Court, the local camp of which the insured was a member was charged with the duty of looking after the health and conduct of its members and of expelling or suspending its members for any violation of the laws of the order or breach of their duties as members of the Society. Those facts do not exist in the present case. Neither the Financial Secretary nor the camp was charged with the duties enumerated. Furthermore, the decision of the Rasicott case was made in 1910, prior to the adoption of the fraternal Code heretofore referred to. Clearly at the time of the decision the only rules which the Court had to follow were the rules of equity. In that opinion the Court stated that the State was vitally

interested in the thrift and frugality of its citizens and stated in effect that it decided the case on equitable principles for the best interest of the public at large, which is termed public policy.

It is undisputed that the State is vitally interested in members of fraternal benefit societies. This could be no more strongly indicated than by the legislature of the State of Idaho adopting a Code of Laws for the government of such societies and the rights under their contracts. This statute having been enacted establishes the public policy of the State of Idaho with respect to fraternal benefit societies and their members which cannot be superseded by court decisions. The legislature by Section 40-2304 I. C. A. 1932 provided that such societies should be governed by the Fraternal Code, being Sections 40-2301 to 40-2407 I.C.A.1932. By Section 40-2309 I.C.A. 1932 the legislature provided that the Constitution, Laws and By-laws of such societies should form a part of their contracts. It did not provide that such portions of the constitution, laws and by-laws as were not declared void by a court should constitute a part of the contract. The legislature undoubtedly recognized the character of such societies, having in mind that the member was both the insured and the insurer. It will be noted in Section 40-2301 I. C. A. 1932 that such societies are voluntary associations, have no capital stock, and are organized and carried on solely for the mutual benefit of its members and their beneficiaries and not for profit, having a lodge system, with a ritualistic form of work and a representative form of government.*

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*See Sections quoted in Appendix.

Undoubtedly the legislature had in mind that the same laws which apply to commercial insurance should not apply to fraternal societies. It undoubtedly had in mind when enacting these statutes the fact that the members themselves through their own representatives govern themselves and enact the provisions of their constitution, laws and by-laws. Having this in mind it cannot be successfully contended that a member is a stranger to the society and the constitution, laws and by-laws. On the other hand it must be conclusively presumed that the member is familiar with the provisions of the constitution, laws and by-laws.

When the Rasicott case was decided, this Code of Laws was not in effect, and the Court had no guide to follow except that of general public policy, and undoubtedly was justified in rendering the decision it did. We are constrained to believe, however, that if the Supreme Court of Idaho were to pass upon this question at this time it would not attempt to supersede the statutes enacted by the legislature for government and control of fraternal benefit societies.

In connection with public policy, we feel certain that the public policy of Idaho is in accord with the general rule, and we will herein refer to some of the authorities with reference to public policy. The following statement is taken from 6 R. C. L. 109, Sec. 108, under the subject of Constitutional Law:

> "It is generally recognized that the public policy of a state is to be found in its constitution and statutes, and only in the absence of any declaration in these instruments may it be determined from judicial decisions. In order to ascertain the public policy of a state

in respect to any matter, the acts of the legislative department should be looked to, because a legislative act, if constitutional, declares in terms the policy of the state and is final so far as the courts are concerned. All questions of policy are for the determination of the legislature, and not for the courts, and there is no public policy which prohibits the legislature from doing anything which the constitution does not prohibit. Hence the courts are not at liberty to declare a law void as in violation of public policy. In accordance with these general principles, it has been said that if a state constitution authorizes a grant, through legislative action, of an exclusive privilege, it must be deemed to be in accord with the policy of the state. Where courts intrude into their decrees their opinion on questions of public policy they in effect constitute the judicial tribunals as law-making bodies in usurpation of the powers of the legislature."

See also 6 R. C. L. 110, Sec. 109.

In 12 Am. Jur. 668, Sec. 171, we find the following:

"Where there are constitutional or statutory provisions, they govern as to what is public policy. Where the lawmaking power speaks on a particular subject over which it has constitutional power to legislate, public policy in such a case is what the statute enacts."

In the same section it is further stated:

"Primarily it is the prerogative of the legislature to declare what agreements and what acts are contrary to public policy and to forbid them."

And it is further therein stated:

"Some of the courts, speaking upon this subject,

> have said that the immediate representatives of the people, in legislature assembled, would seem to be the fairest exponents of what public policy requires, since they are most familiar with the habits and fashions of the day and with the actual condition of commerce and trade—their consequent wants and weaknesses—and that legislation is least objectionable, because it operates prospectively, as a guide in future negotiations, and does not, like a judgment of a court, annul an agreement already concluded. Courts have no right to ignore or set aside a public policy established by the legislature. Therefore, it is the duty of the judiciary to refuse to sustain that which is against the public policy of the state as manifested by the legislation or fundamental law of the state. Courts cannot declare agreements or acts authorized by statute to be contrary to public policy."

In 11 Am. Jur. 814, Sec. 139, we find the following:

> "In order to ascertain public policy of a state with respect to any matter, the acts of the legislative department should be looked to, because a legislative act, if constitutional, declares in terms the policy of the state and is final so far as the courts are concerned."

On page 816 of the same volume and section we find the following:

> "Not only is there no public policy which prohibits the legislature from doing anything which the constitution does not prohibit, but a statute is conclusive as to public policy of the state unless it contravenes constitutional provisions. Hence, the courts are not at liberty to declare a law void as in violation of public policy."

Applying these authorities which we believe represent the

rule in Idaho as well as the general rule, the conclusion that the legislature of Idaho has delegated to fraternal benefit societies the power to make their constitutions, laws and by-laws a part of their contract and enforce the same cannot be escaped.

In the Court's opinion the following is quoted from the opinion of Order of United Commercial Travelers vs. Campbell, 115 Fed. (2) 743:

> "It is the rule that the existence of a waiver depends upon the effect of the insurer's action upon the insured, not upon what the insurer intends."

We submit the rule quoted is not the law of Idaho. We have discovered no reason to believe the rule in Idaho as to waiver is different from the general rule. Waiver is defined in 67 C. J. 289, Sec. 1, as follows:

> " 'Waiver' has been defined as a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim, or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it."

We further find in 67 C. J. 298, Sec. 2 the following:

> "Waiver is a voluntary act or a voluntary refraining from action. A waiver always contemplates that

> a party has in the knowledge of his rights voluntarily surrendered them."

In 67 C. J. 299, Sec. 5, we find:

> "Inasmuch as the intentional relinquishment of the rights, benefit, or advantage in question is generally an essential element of waiver, such relinquishment necessarily involves knowledge; thus, waiver involves or is based upon knowledge as an essential element."

In 67 C. J. 302, Sec. 6, we find:

> "A waiver must be intentional; it must be an intentional act with knowledge."

In support of this statement among other authorities under Note 43 is cited the case of Grimm Alfalfa Seed Growers vs. Stroschein, 42 Ida. 12, 242 Pac. 444. While this case does not involve similar facts to those in the instant case, it is apparent from reading this opinion that the Supreme Court of Idaho held that there can be no waiver without an intention on the part of the person charged with waiver to relinquish his right. In the opinion of this case reference was made to the case of Hawkins vs. Smith, 35 Ida. 349, 205 Pac. 188, and the following quoted therefrom:

> "To constitute a waiver within the definition already given, it is essential that there be an existing right, benefit, or advantage, knowledge, actual or constructive, or its existence, and an intention to relinquish it."

To the same effect are Garrett vs. Neitzel, 48 Idaho 727,

285 Pac. 473, Independant Gas and Oil Co. vs. T. B. Smith Co., 51 Idaho 710, 10 Pac. (2) 317, and Hopkins vs. Hensley et al, 53 Idaho 120, 22 Pac. (2) 138.

We therefore respectfully submit that the law of Idaho is not, as held in the case of Order of United Commercial Travelers vs. Campbell, that it depends upon the effect of the insurer's action upon insured and not what the insurer intends. But on the other hand, the Supreme Court of Idaho has plainly and without doubt stated that the existence of a waiver depends upon the intention of the party charged with waiver. Furthermore the Supreme Court of Idaho has held that knowledge is an undisputed element of waiver.

The facts under consideration show that the Society had no knowledge of ill health of Eric A. Krussman when payments were made after the last day of the month, that it had no intention to do other than to accept the payments after the last day of the month for the purpose of reinstatement in accordance with the contract. Under the rules as to waiver established by the Supreme Court of Idaho there could be no waiver.

The contract under consideration has full statutory approval. The force of these statutes establish the public policy of the state of Idaho. As stated in Sovereign Camp vs. Moraida, 113 S. W. (2) 177, on page 180:

> "The legislature was not without power to grant fraternal benefit societies the authority conferred by Article 4846 (40-2331 I. C. A. 1932), and the exercise of such power cannot lawfully be thwarted by judicial decree."

It does not seem logical to argue that while the Society was required to accept these payments under the terms of its contract, yet the member could disregard his warranty of good health and urge a waiver on the part of the Society for doing that which it was required to do. Neither does it appear logical to suggest that the Rasicot case marked the path to follow when a subsequent Idaho legislature determined another course.

CONCLUSION

In conclusion, therefore, we most respectfully urge that the appellant's petition for re-hearing be granted and that judgment of the District Court for the District of Idaho, Eastern Division, be upon further consideration reversed.

Respectfully submitted,

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RAINEY T. WELLS
Residing at Omaha, Nebraska

Attorneys for Petitioner and Appellants

Service of foregoing Petition for Re-hearing and Brief in support of Petition for Re-hearing acknowledged this 17th day of November, 1942.

T. D. JONES

R. H. JONES

Residing at Pocatello, Idaho

Attorneys for Respondent

APPENDIX

The following sections are quoted from Title 40 of Idaho Code Annotated, 1932.

Section "40-2301. Fraternal benefit societies defined.—Any corporation, society, order or voluntary association without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative for of government, and which shall make provision for the payment of benefits in accordance with section 40-2305, and any mutual life association whose membership is limited to a secret fraterniy, profession or guild and which elects its officers and directors by direct vote of its members, either in person or by proxy, is hereby declared to be a fraternal benefit society."

Section "40-2304. Exemptions.—Except as herein provided such societies shall be governed by this chapter and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein."

Section "40-2309. Certificates.—Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and

conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership."

Section 40-2320. Constitution and by-laws.— Every society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws, and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society."

Section "40-2331. By-laws may not be waived.— The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members."